

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Authorizing Permissive Use of the “Next	)	GN Docket No. 16-142
Generation” Broadcast Television Standard	)	

**PETITION FOR RECONSIDERATION**

NCTA – The Internet & Television Association, pursuant to Section 1.429 of the Commission’s rules, submits this Petition for Reconsideration of the *Report and Order* in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION**

In its *Report and Order*, the Commission authorized the launch of a new broadcast television transmission standard that is incompatible with today’s consumer equipment and cable television systems. NCTA has no objection to approval of this experimental new standard so long as it is introduced and implemented in a manner that does not impose costs and hardships on local cable systems and their customers.<sup>2</sup> In their initial filings seeking approval of the new standard, the broadcasters gave assurances that they would take steps and accept conditions that prevented any such collateral harm.<sup>3</sup>

---

<sup>1</sup> *In the Matter of Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017) (“*Report and Order*”).

<sup>2</sup> Comments of NCTA – The Internet & Television Association, GN Docket No. 16-142 (filed May 9, 2017); Reply Comments of NCTA – The Internet & Television Association, GN Docket No. 16-142 (filed June 8, 2017); Letter from Rick Chessen, Senior Vice President, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142 (filed Nov. 6, 2017).

<sup>3</sup> See America’s Public Television Stations, The AWARN Alliance, The Consumer Technology Association, and The National Association of Broadcasters Joint Petition for Rulemaking, GN Docket No. 16-14 at 18 (filed Apr. 13, 2016) (“Because broadcasters voluntarily electing to move to the new standard will continue to deliver programming streams to MVPDs in the current standard...there should be no new operational burdens on MVPDs.”); Letter from Patrick McFadden, Associate General Counsel – Legal Affairs, NAB, to Marlene H.

But along the way, the broadcasters retreated step by step from such promises. And while the *Notice of Proposed Rulemaking* acknowledged the potential for disruption that could result from introduction of an entirely new way of transmitting television signals,<sup>4</sup> the rules adopted in the *Report and Order* fall short of addressing those real concerns, downplaying broadcasters' incentives to shift the costs and burdens of this new standard onto cable operators and the viewing public by threatening to withhold or condition the availability of the ATSC 1.0 programming that is the only format compatible with current equipment.

In particular, the *Report and Order*'s sunset of the "substantially similar" requirement for simulcast ATSC 1.0 signals just five years from now will needlessly expose consumers to the risk of degraded ATSC 1.0 programming or the loss of that programming altogether given that no ATSC 3.0-compatible television sets or equipment to allow cable companies to retransmit ATSC 3.0 signals are available in the U.S., and the new standard has only recently been fully adopted by the ATSC.<sup>5</sup> The Commission should reconsider this sunset of the "substantially similar" requirement and protect against degradation of picture quality by requiring broadcasters to simulcast ATSC 1.0 signals in HD to the extent they are currently broadcasting such signals in HD.

Additionally, by failing to provide any constraints on the ability of broadcasters to use the retransmission consent process to gain carriage of their experimental ATSC 3.0 signals, the

---

Dortch, Secretary, FCC, GN Docket No. 16-142 (filed June 3, 2016) ("Just as simulcasting will protect viewers, so too will it ensure that MVPDs continue to receive broadcast programming. *The approval of a new transmission standard need not impose new burdens on MVPDs.*") (emphasis added).

<sup>4</sup> *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd 1670 (2017) ("NPRM").

<sup>5</sup> Elements of the new standard are still undergoing changes. See, e.g., ATSC, Candidate Standards <https://www.atsc.org/standards/candidate-standards/>. Several revisions to ATSC 3.0 standards documents were balloted as recently as February 2018.

*Report and Order* fails to protect cable systems and their customers against the significant costs and other burdens associated with premature and potentially unnecessary investments in technology and equipment to carry such signals. Finally, the Commission’s determination not to impose reasonable guardrails for the patent licensing process leaves users of this new government-approved standard, including cable operators, open to potentially unfair pricing and licensing terms. The Commission offers no reasoned explanations for these shortcomings, and it should reconsider all of them.

## **DISCUSSION**

### **I. THE COMMISSION SHOULD STRENGTHEN ITS SIMULCASTING RULES**

#### **A. The Simulcasting Rules Should Not Arbitrarily Sunset**

The *Report and Order* requires broadcasters that launch an ATSC 3.0 signal to simulcast the primary video stream of their ATSC 3.0 channel in ATSC 1.0 format, calling “local simulcasting . . . a *critical component* of the Commission’s authorization of ATSC 3.0 as a voluntary transmission standard.”<sup>6</sup> This core obligation is intended to ensure that “MVPDs can continue to carry the 1.0 signal of stations deploying 3.0 without necessitating [that] MVPDs incur the expense of converting to 3.0 capable equipment or acquir[e] the equipment necessary to permit reception of an ATSC 3.0 signal and ‘down convert[]’ that signal to a format compatible with legacy equipment, including set-top boxes.”<sup>7</sup>

Requiring simulcasting is a rational and appropriate approach. Continued transmission of an ATSC 1.0 signal helps to ensure that cable operators and their customers – as well as over-the-air viewers—are not saddled with the costs and disruptions that otherwise would result from

---

<sup>6</sup> *Report and Order* ¶ 11.

<sup>7</sup> *Id.* ¶ 17.

certain broadcasters choosing to experiment with an incompatible transmission format. But continued transmission of an ATSC 1.0 signal, standing alone, is only one element of that protection. The *Report and Order* also recognized that launch of an ATSC 3.0 signal could still have an adverse impact on over-the-air and cable viewers if, in order to promote their ATSC 3.0 stream, broadcasters diminished the quality of the content on their ATSC 1.0 simulcast signal.

As a result, the Commission adopted enforceable measures to prevent broadcasters from degrading their ATSC 1.0 programming in order to prematurely force over-the-air viewers and cable operators to make the considerable investments that it would take to retain access to programming they enjoy today. Specifically, programming aired on the ATSC 1.0 simulcast channel must be “‘substantially similar’ to that of the primary video stream on the ATSC 3.0 channel,”<sup>8</sup> with limited exceptions based on the enhanced capabilities of that format, advertising and promotions for upcoming programs. As the Commission put it, “this approach will help ensure that viewers do not lose access to the broadcast programming they receive today, while still providing flexibility for broadcasters to innovate and experiment with new, innovative programming features using Next Gen TV technology.”<sup>9</sup>

Without this “substantially similar” mandate, the simulcasting requirement would be significantly less effective in achieving its objective. But inexplicably, while setting no expiration date for the requirement to continue simulcasting a 1.0 *signal*, the Commission provided for the sunset of the “substantially similar” *content* requirement only five years after the *Report and Order’s* effective date. It committed to reexamine the *simulcast ATSC 1.0 signal* obligation later in the process, when it will be better able to assess the pace of voluntary

---

<sup>8</sup> *Id.* ¶ 22.

<sup>9</sup> *Id.*

deployment of ATSC 3.0, penetration of ATSC 3.0 television sets and other converter equipment, and the extent of MVPDs' deployment of ATSC 3.0 equipment to determine whether and when to eliminate the simulcasting requirement.<sup>10</sup> Yet, the equally important *simulcast content* requirement will end in a mere five years without any future assessment of *any* of those factors.<sup>11</sup>

The Commission should reconsider this arbitrary five-year sunset, which has no basis in the record. The *Report and Order* offers no reason to expect that consumers, who have just purchased new ATSC 1.0 television sets by the tens of millions, will be ready to make the investments necessary to acquire ATSC 3.0-ready equipment in such a short amount of time. Nor is there any evidence that cable operators will be in a position in 2023 to transmit ATSC 3.0 signals—or that it will be rational to expect them to do so given the unpredictable state of deployment and demand for ATSC 3.0 signals at that time.

The Commission certainly has no historical basis for establishing a five-year timeline for a transition of this magnitude. Indeed, the transition from analog to digital television, which was *mandatory and eventually involved a hard end date*, took 13 years from when Congress authorized a second digital channel for each analog station. Moreover, the Commission played a much different role in ensuring the orderly roll-out of that new format, establishing a timetable by which television broadcasters were mandated to launch a companion digital signal. By contrast, there is no start date by which broadcasters must transmit an ATSC 3.0 signal – and

---

<sup>10</sup> *Id.* ¶ 14.

<sup>11</sup> *Id.* ¶ 22. (“The substantially similar requirement will sunset in five years from its effective date (i.e., the date it is published in the Federal Register) absent further action by the Commission via rulemaking to extend it.”).

some may never choose to do so. And even if stations in some markets may opt to launch an ATSC 3.0 signal, stations in other markets may not.

Even for those stations potentially interested in participating in this experiment, it may be years before they start transmitting an ATSC 3.0 signal. The standard itself was just finalized in January 2018, and while some testing is occurring,<sup>12</sup> equipment is not yet deployed on any significant scale. Television sets with ATSC 3.0 tuners are not in the U.S. marketplace. Moreover, as the *Report and Order* acknowledges, it is likely that the post-auction repacking, which will take three years, must occur before “many stations have had a reasonable opportunity to implement Next Gen TV broadcasting.”<sup>13</sup> Accordingly, it is reasonable to expect that the ATSC 3.0 launch will not occur immediately, and unreasonable to expect that any consumer acceptance of ATSC 3.0 will have advanced beyond the very early stages five years hence.

In short, there is no rational basis for establishing a sunset date for the “substantially similar” content requirement at this time. Instead, the Commission should establish this sunset date in the same proceeding that it has already committed to launch regarding when and whether to end the simulcast signal requirement. At that time, it can evaluate the many factors relevant to the continuing need for *both* requirements.<sup>14</sup>

---

<sup>12</sup> See Paul Greeley, *WRAL Shows Olympics In Next Gen TV Format*, TV News Check (Feb. 21, 2018), <http://www.tvnewscheck.com/marketshare/2018/02/21/wral-shows-olympics-in-next-gen-tv/>; Rick Smith, *The future of broadcasting: Next Generation TV debuts in Raleigh*, WARL (Feb. 20, 2018), <https://www.wraltechwire.com/2018/02/20/the-future-of-broadcasting-next-generation-tv-debuts-in-raleigh/>.

<sup>13</sup> *Report and Order* ¶ 101.

<sup>14</sup> The *Report and Order* also undermines the protection accorded cable operators through incorporation of the A/322 standard into the technical rules. The record shows that “device manufacturers and MVPDs may not be able to reliably predict what signal modulation a broadcast is using unless broadcasters are required to follow A/322.” *Report and Order* ¶ 99. This element of certainty is necessary for the entire ecosystem in which ATSC 3.0 will operate. However, while the Commission recognized that important interest in requiring inclusion of A/322 at the launch of this new signal, it arbitrarily lifts that standard after five years. The *Report and Order* offers no compelling reason to believe that the need for that certainty will vanish in 2023.

**B. The Simulcasting Rules Should Be Strengthened to Ensure that Broadcasters Do Not Degrade their ATSC 1.0 Signal**

During the simulcast period, broadcasters that use their existing 6 MHz channel to transmit an ATSC 3.0 signal will have to share a different 6 MHz channel to send a simulcast ATSC 1.0 stream. Because a high definition (HD) ATSC 1.0 signal consumes more bandwidth than a standard definition ATSC 1.0 signal, there is reason to fear that broadcasters launching an ATSC 3.0 signal will have strong incentives to degrade their over-the-air HD ATSC 1.0 signal so that more streams can be squeezed into another 6 MHz channel. The record shows why this is a legitimate cause for concern.<sup>15</sup> In fact, the *Report and Order* recognizes the potential for negative impacts if there were to be a loss of HD programming: “this change could affect both OTA viewers and MVPD subscribers, as MVPDs often rely on OTA reception of broadcast signals to retransmit local programming to their subscribers.”<sup>16</sup> Nonetheless, the *Report and Order* fails to adopt any real protection against this harm to the public interest.

Instead, rather than adopting a rule requiring the continued provision of HD on the ATSC 1.0 simulcast stream, the *Report and Order* simply “urge[s] broadcasters to continue to provide high quality/HD service on their 1.0 simulcast channels to the extent possible . . .” But its acknowledgement of the broadcasters’ competing incentives to degrade their signal<sup>17</sup> undermines its conclusion that a rule is unnecessary because broadcasters have “market-based incentives”<sup>18</sup> to continue to provide HD programming on the ATSC 1.0 signal.

---

<sup>15</sup> See, e.g., Comments of NCTA at 10-11; Reply Comments of NCTA at 6-7.

<sup>16</sup> *Report and Order* ¶ 28.

<sup>17</sup> *Id.* ¶27 (“Because simulcasting partnerships will require that more stations share the same amount of spectrum, stations may have less capacity for HD programming.”).

<sup>18</sup> *Id.*

In this respect, the *Report and Order* adopts an arbitrary approach that fails to protect the viewing public and cable operators. On reconsideration, the Commission should require at the outset that broadcasters that currently provide their primary video stream in HD continue to transmit an HD ATSC 1.0 signal. This requirement can and should be reevaluated at the same time as the Commission reviews its other simulcasting rules.

**II. THE COMMISSION SHOULD RECONSIDER ITS DECISION NOT TO PROHIBIT BROADCASTERS FROM USING RETRANSMISSION CONSENT FROM THE OUTSET TO OBTAIN CARRIAGE OF THEIR ATSC 3.0 SIGNALS.**

In its NPRM, the Commission recognized and sought comment on concerns regarding broadcasters' ability to withhold retransmission consent for their ATSC 1.0 signals unless an MVPD agreed to incur the significant costs of carrying their ATSC 3.0 signals.<sup>19</sup> All parties have agreed from the outset that there should be no mandatory carriage of the new 3.0 signals throughout the period in which transmission of such signals by broadcasters is wholly voluntary and is accompanied by the continued broadcasting of a 1.0 signal. And in their initial representations to the Commission, broadcasters seemed to agree that since they would continue providing their ATSC 1.0 signals, they would not expect MVPDs to have to carry ATSC 3.0 signals pursuant to must-carry *or* retransmission consent.

Thus, as Sinclair's EVP told the Commission in December 2016:

Broadcasters have no interest in delaying implementation of Next Generation TV until MVPDs are technically capable of carrying it. Therefore, broadcasters are prepared to deliver their program streams to MVPDs in the current standard (ATSC 1.0), *so as to maintain the operational status quo of MVPD carriage*. Because there would be *no change in what MVPDs are carrying*, there should be

---

<sup>19</sup> See NPRM at 1689-90.



*no change to the underlying carriage arrangement, be it must carry or retransmission consent.*<sup>20</sup>

But when NCTA and others asked, in their comments, that the Commission ensure this maintenance of the status quo by adopting a rule that prohibited a broadcaster from using retransmission consent to gain carriage of an ATSC 3.0 channel prematurely by withholding the ATSC 1.0 signal, certain broadcasters resisted and opposed any such provision, urging the Commission “to allow the marketplace to resolve voluntary carriage issues without adopting any new retransmission consent rules.”<sup>21</sup> That, of course, is tantamount to allowing the mandatory carriage – the “change to the underlying carriage arrangement” – that the broadcasters forswore. And, without ever explaining why such mandatory carriage should be allowed during – much less at the very outset of – the broadcasters’ experimentation with ATSC 3.0, the Commission adopted the broadcasters’ proposal.

Specifically, the Commission found that it was “premature to address any issues that may arise with respect to the voluntary carriage of ATSC 3.0 signals before broadcasters begin transmitting in this new voluntary standard. Therefore, we decline to adopt any new rules regarding retransmission consent in this proceeding and will allow these issues at the outset to be addressed through marketplace negotiations.”<sup>22</sup> That conclusion makes no sense. It is precisely at the earliest stages of the deployment of ATSC 3.0 – when the future of the new standard remains uncertain and the risk of prematurely investing in and deploying technology to receive

---

<sup>20</sup> Letter from Rebecca Hanson, Senior Vice President, Sinclair Broadcast Group, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Dec. 12, 2016) (emphasis added).

<sup>21</sup> *Report and Order* ¶ 77.

<sup>22</sup> *Id.* ¶ 78.

and retransmit ATSC 3.0 signals is highest – that forced carriage of the new signal is most harmful and costly to MVPDs.

The whole point of the simulcasting requirement, discussed above, and of excluding ATSC 3.0 signals from mandatory carriage, is to ensure that over-the-air viewers and MVPDs and their subscribers not be required prematurely to incur the costs of viewing or carrying 3.0 signals. Allowing broadcasters to gain such carriage in retransmission consent negotiations by withholding an ATSC 1.0 signal is flatly inconsistent with that rationale. The Commission has made no effort to explain the inconsistency or justify its decision. It should reconsider its decision and adopt a rule, in one form or another (as proposed by several parties), that keeps ATSC 3.0 carriage out of ATSC 1.0 retransmission consent negotiations.

### **III. THE COMMISSION SHOULD ADOPT PATENT PROTECTIONS**

Patent protection is another aspect of ATSC 3.0's roll-out that should be established at the outset. Rather than requiring that patents relevant to a government-mandated standard must be licensed on a reasonable and non-discriminatory (RAND) basis, as was the case with the standards for ATSC 1.0,<sup>23</sup> the Commission has adopted a wait-and-see attitude that is unwarranted here. It will “monitor how the marketplace handles patent royalties for essential patents, but we will not require reasonable and non-discriminatory (RAND) licensing at this time.”<sup>24</sup> In so doing, the Commission is abdicating an important role that it has historically

---

<sup>23</sup> See *Report and Order* at Dissenting Statement of Commissioner Jessica Rosenworcel (“When the agency adopted the ATSC 1.0 standard, it made clear that reasonable and nondiscriminatory terms were part of the package.”).

<sup>24</sup> *Report and Order* n.300.

played to ensure that its adoption of a privately-developed standard does not result in an unfair windfall to patent owners.<sup>25</sup>

The Commission should reconsider its unduly lax approach to needed protections against unfair exploitation of patent rights in this new standard.<sup>26</sup> Rather than wait for damage to be done, the Commission should prevent it at the outset.

## CONCLUSION

The approval of a new, voluntary television broadcast standard is a significant milestone. On reconsideration, the Commission should modify its rules to better ensure a smoother transition – and one that is truly voluntary – for all participants in the video marketplace.

Respectfully submitted,

/s/ **Rick Chessen**

William A. Check, Ph.D.  
Senior Vice President, Technology  
and Chief Technology Officer

Rick Chessen  
Michael S. Schooler  
Diane B. Burstein

Andy Scott  
Vice President, Engineering  
Technology

NCTA – The Internet & Television  
Association  
25 Massachusetts Avenue, N.W. – Suite 100  
Washington, D.C. 20001-1431  
(202) 222-2445

March 5, 2018

---

<sup>25</sup> See *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771, ¶ 55 (1996) (imposing RAND licensing fees for ATSC 1.0).

<sup>26</sup> See Letter from Rick Chessen, Senior Vice President, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142 (filed Nov. 8, 2017) (detailing concerns about potential unfair financial benefits from ATSC 3.0 patents).